



UNITED STATES DISTRICT COURT

for the

MIDDLE District of NORTH

CAROLINA Division

Case No.

18CV574

(to be filled in by the Clerk's Office)

Justin Randolph Mitchell

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Forsyth County, et al.

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

Jury Trial Demanded

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS
(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

Justin Randolph Mitchell

All other names by which
you have been known:

ID Number

0784177

Current Institution

Alexander Correctional Institution

Address

633 Old Landfill Road

Taylorville

N.C.

28681

City

State

Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

Forsyth County

Job or Title (*if known*)

Shield Number

Employer

Address

Forsyth County Government Center

201 N. Chestnut Street

Winston-Salem

N.C.

27101

City

State

Zip Code



Individual capacity



Official capacity

Defendant No. 2

Name

CONNECT CARE SOLUTIONS

Job or Title (*if known*)

Provide Health Services AT Forsyth County Jail

Shield Number

Employer

Address

1283 Murfreesboro Road, Suite 500

NASHVILLE

TN

37217

City

State

Zip Code



Individual capacity



Official capacity

Defendant No. 3

Name

Job or Title (if known)

Shield Number

Employer

Address

Alan Broades

DOCTOR AT Forsyth County Jail

CORRECT CARE SOLUTIONS
1283 MARLBOROUGH ROAD, Suite 500
NASHVILLE TN 37217

☒ Individual capacity

☒ Official capacity

Defendant No. 4

Name

Job or Title (if known)

Shield Number

Employer

Address

B. Whitaker

CAPTAIN

Forsyth County Sheriff Office
301 NORTH CHURCH STREET
WINSTON-SALEM N.C. 27101

☒ Individual capacity

☒ Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

☐ Federal officials (a *Bivens* claim)

☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

The Fourteenth Amendment - Due Process Right to Adequate medical care. Inadequate care by private-jail medical provider and Deliberately Indifferent to medical needs.

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

Defendant No. 5

Name	BROD STANLEY
Job or Title	CHIEF DEPUTY
Shield Number	
Employer	FORSYTH COUNTY
Address	301 NORTH CHURCH STREET
	Winston-Salem N.C. 27101
	City STATE Zip Code
<input checked="" type="checkbox"/> Individual Capacity	<input type="checkbox"/> Official Capacity

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed. Defendant 1, Forsyth County, is the employer and financially responsible for paying for inmates outside appointments to specialists. Defendant one acted under color of state or local law by violating the plaintiff →

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

- ☒ Pretrial detainee
☐ Civilly committed detainee
☐ Immigration detainee
☐ Convicted and sentenced state prisoner
☐ Convicted and sentenced federal prisoner

☒ Other (explain)

I was a pretrial detainee when the claims occurred and now I am convicted and an sentenced state prisoner.

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

The events giving rise to my claim arose at Forsyth County Jail in Winston-Salem, North Carolina.

Continued II. Basis For Jurisdiction Letter D [Page 40 of 11]
14th Amendment by not financially paying for the plaintiff
Appointments for physical therapy at Ortho Carolina.

Defendant 2. Correct Case Solutions has a contract with Forsyth
County to provide Health Services to inmates at The Forsyth County
Jail. Defendant Two, acted under color of state or local law by
violating the plaintiff 14th Amendment Rights by not providing the
plaintiff Due process right to Adequate medical care and failing
to approve the 8 weeks of physical therapy the plaintiff medically
needed.

Defendant 3. Doctor Alon Rhodes acted under color of state or
local law by violating the plaintiff 14th Amendment Rights -
Inadequate care by Private-Jail medical Providers and Deliberately
Indifferent to plaintiff serious medical conditions and needs.

Defendant 4. Captain B. Whitaker acted under color of state or
local law by violating the plaintiff 14th Amendment Rights and
giving the plaintiff legal advice/opinions on accepting grievances
plaintiff filed on medical conditions.

Defendant 5. Chief Deputy B. Stanley acted under color of state
or local law by violating the plaintiff 14th Amendment Rights
and Negligent in the scope of his duties to investigate plaintiff
grievances versus siding with medical personnel.

C. What date and approximate time did the events giving rise to your claim(s) occur?

July 20th, 2016, through October 31st, 2016

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?) ON July 20, 2016, I WAS taken to ORTHO CAROLINA for Evaluation for Back pain. On July 26, 2016, I was taken back to ORTHO CAROLINA to have two lower back MRI scans done. On August 03, 2016, the plaintiff had a follow-up appointment with specialist M.D. Timothy Wade McCrewen for plaintiff MRI Results in which →

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive. I never received the physical therapy I x per week for 8 weeks at ORTHO CAROLINA that ORTHO CAROLINA Specialist M.D. Timothy Wade McCrewen ordered on August 03, 2016. I suffered from Pain, Suffering, unnecessary continuation of Pain, Potential dangers to have permanent Back Damages, mental Anguish, Insomnia, future lost of wages and future medical expenses.

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

1. Compensatory and General Damages in the amount of \$10,000,000;
2. Punitive or exemplary damages in an amount to be proven at trial;
3. Cost under 1983 42 U.S.C.;
4. Attorney Fees, if represented by an attorney, under 42 U.S.C. 1983;
5. And such other further Relief as may be just and equitable in the premises.

Continued IV. STATEMENT OF CLAIM Letter D. Page 5 of 11

Specialist McGowan diagnosed plaintiff with bulging disc L4-5 and wrote orders for physical therapy x 8 weeks comp. Rehab. Specialist McGowan told me a physical therapist would be there to assist me with physical therapy and using free weights.

2. On August 10, 2016, Nurse Practitioner John E. Mancy wrote in his progress notes: Mr. Mitchell was referred to Ortho for evaluation of Back Pain. MRI LUMBAR scan was performed and he was diagnosed with bulging disc at L4-L5. No surgery indicated and NO follow up needed per ortho. He was ordered PT x 8 weeks and extra mattress. Will send for PT, however ask PT to instruct pt. on how to perform these exercise independently.

3. On August 12, 2016, Doctor Alan Rhoades "applied his own personal opinion" in his progress notes stating under #3. Physical Therapy x 8 weeks: (A.) will need to start the process of requesting physical therapy, but it is likely that Corporate will agree to a short PT interaction so the inmate can learn various exercises and expect him to perform techniques on site.

4. On August 19, 2018, I was taken to Ortho Carolina for a PT Initial Evaluation. Plan of care where I was assigned Provider Carrie Kibler. In provider Carrie Kibler Assessment she stated: PT (Patient) will benefit from skilled

Page 2.

Physical Therapy Services to increase strength and pain free ABOM of Lumbar spine in order to return to Functional Activities without difficulty. By signing this referral, I certify that I have examined the patient and physical and/or hand therapy is medically necessary.

5. ON August 24, 2016, "Doctor Alan Rhoades Applied his "own personal Assumptions" From ortho Carolina provider Carrie Hibler Evaluation for physical Therapy for the plaintiff and stated in his progress notes: I met with N.P. Bandy yesterday to discuss the case with him and we both met with L.T. Whitaker afterwards to work out details because there were recommendations made by the physical Therapy Team recently."

6. ON October 31, 2016, I WAS taken to ORTHO Carolina for a Follow-up with my assigned physical Therapist Provider Carrie Hibler. I explained to her that Doctor Alan Rhoades told me that correct Care solutions the company that provides medical Services for the Jail was not trying to Approve the 8 weeks of physical Therapy and that I was being forced to do physical Therapy on a medical floor at the Jail which I never did without the help of a licensed physical Therapist, Nurse, or CNA.

7. Physical Therapist Provider Hibler sent medical Documents back with my medical Records for Forsyth County detention Center stating I medically needed physical

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Therapy x1 per week for 8 weeks at their facility. The documents included the M.D. original M.D. orders for x8 weeks of physical therapy comp. Rehab x1 per week. By signing this referral, I certify that I have examined the patient and physical and/or hand therapy is medically necessary.

8. Physical Therapist Provider Carrie Hibler further diagnosed me with: low back pain with lower extremity symptoms; Significant Findings: Patient with left sided weakness compared to right side, particularly with left hip, on October 31, 2016.

9. ON November 01, 2016, Nurse Practitioner Boney and then medical Director Sable Caldwell came to the second floor multi purpose room to discuss how they were going to do the second order for x8 weeks of physical therapy that Provider physical therapist ordered me to do at Ortho Carolina. The conclusion was I would be moved to the Special Care Unit to be closely monitored via Camera Cell and established a routine for my physical therapy.

10. ON November 07, 2016, I was moved from cell 2A-20 the medical floor to the Special Care unit and placed in cell F-002.

11. ON November 09, 2016, I was moved back to cell 2A-20 on the medical floor and was told the cell I was in was needed by medical.

Page 4.

12. On November 11, 2016, Doctor Alan Rhoades stated in his medical Progress NOTES: "This is a patient with chronic pain issues and he was placed in the Special Care Unit temporarily. The purpose of placement there was to monitor him and prove that he was performing the exercises suggested. Unfortunately, we were confronted with inmates who were very sick and the Special Care Unit beds were needed based on complexity and severity, so Mr. Mitchell had to be placed back into general population. When the opportunity arises, we will gladly consider a transfer back to the SCU in order to monitor the situation.

13. On May 17, 2017, I filed a grievance on Doctor Alan Rhoades for being Deliberate Indifferent to the physical Therapy that was ordered by Ortho Carolina Orthopedic Specialist for 8 weeks. I appealed every step all the way to The Chief Deputy B. Stanley [the highest Administrative] and produced my own medical records showing him my facts and evidence that supported my grievance. He was "Boss" as always and went along with medical staff.

14. On July 28, 2017, I was seen by a fill-in-doctor named Donald Rhodes who told me in front of Rn Jackson, Doctor Alan Rhoades decides if a inmate goes to an out-patient physical Therapy Appointment. Provider Rhodes also stated in his Chronic Care Periodic Exam or Follow up Visit Progress NOTES: We reviewed the fact that doing physical Therapy, going to a Chiropractor, using a heating pad

Oh ice pack or getting a massage may be nice and may even make him feel better, but that it is not medically necessary and that on the outside, his insurance company may very well not approve these interventions either. Mr. Mitchell became upset at this point and left the Exam Room.

15. The Inadequate medical Care from the Defendants Breached the terms of the Contract between the Company Correct Care Solutions who provided medical services to the inmates at Forsyth County Jail in 2016, The medical Provider Alan Rhoades and The County of Forsyth who then currently paid Correct Care Solutions \$4.2 million annually to provide medical care to jail inmates.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

- A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?
- ☒ Yes
- ☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

Forsyth County Jail

- B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?
- ☒ Yes
- ☐ No
- ☐ Do not know

- C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?
- ☐ Yes
- ☐ No
- ☒ Do not know

If yes, which claim(s)?

- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

- E. If you did file a grievance:

1. Where did you file the grievance?

Forsyth County Jail

2. What did you claim in your grievance? This grievance is on medical staff. It's been a week since I've had my follow-up with ortho-Carolina and medical have yet to provide me with the written Recommendations Surgeon McEwen wrote. This is a violation of my civil rights and Amendments afforded to me by the →

3. What was the result, if any? I never got the x8 weeks physical therapy at ortho Carolina with a licensed physical therapist, in which the medical Director stated under Shift Administrator Section Head on my grievance: send to physical therapy dated 8-16-2016

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.) I accepted that grievance believing I was being sent to physical therapy as the medical Director, Doctor Aron Rhoades and Nurse Practitioner told me in a meeting. I wrote another grievance on date 9/11/2016 and was told by then Lt. Whitaker to accept the grievance after Step II and wait until I go to my follow-up appointment and see what ortho Carolina

Continued VII. Exhaustion of Administrative Remedies Administrative
Procedures [Letter E # 2] Page 7 of 11

Constitution of the United States, when medical staff knows the
Significant of my injuries to my lower back caused by the hands
of Police officers. I've followed proper policy by filing a sick-
call and have yet to be seen for my requests. Dr. Rhoades was here
at the Jail on last Thursday and again today 8-09-2016 and I've
have yet seen him on a follow-up for MRI results moreless
other complaints I have that happen on May 17, 2016.

Signature: Justin R. L. #148809 DATE: 08/09/2016.

Continued VII. Exhaustion of Administrative Remedies Administrative
Procedures [Letter E. # 4] Page 7 of 11

day. He also told me he spoke to CCS and they said they
were not approving x 8 weeks of physical therapy. Being L.T.
Whitaker advised me that my grievance would go nowhere I
accepted the proposed action. DATE: 10/17/2016

On May 17, 2017 I filed a grievance on Dr. Alon Rhoades for
being Deliberate Indifferent to the physical therapy that was
ordered by Ortho Carolina Orthopedic Specialists for x 8 weeks.
In Dr. Rhoades Progress Notes on 08/12/2016 #3 he
stated: will need to start the process of requesting physical →

Continued. VII Exhaustion of Administrative Remedies Administrative Procedures. [Letter E. #4] Page 7 of 11

but it is likely that Corporate will agree to a short PT interaction so the inmate can learn various ~~various~~ Exercises and expect him to perform techniques on site." On 9-11-2016 I filed a grievance and my proposed Resolution was: That I Request to receive the immediate Professional, Physical Therapy Assistance that I much Need, to ensure my proper and Full Recovery. The Shift Administrator stated: you will go to the initial visit then do the recommend exercise here and then go to your follow up visits. (only two visits) I did not accept the the proposed Action because I do not agree with CCS decision on two visits, when Surgeon McGowan Recommended me 8 weeks physical Therapy @ Ortho Carolina. This grievance is four pages long and I appealed the major [B. Slater] Response to The Chief Deputy B. Stanley. Yes The Grievance is complete.

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

N/A

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

N/A

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies. *I Exhausted all remedies for grievances and even showed my preponderance of evidence to The Chief Deputy who always sides with medical personnel/Jail staff even when they are wrong.*

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this "three strikes rule"?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☒ Yes

☐ No

B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)

1. Parties to the previous lawsuit

Plaintiff(s)

Defendant(s)

Justin Randolph Mitchell
ORTHO CAROLINA WINSTON, et al

2. Court (if federal court, name the district; if state court, name the county and State)

MIDDLE DISTRICT

3. Docket or index number

1:17-cv-712

4. Name of Judge assigned to your case

Judge Catherine C. Eagles

5. Approximate date of filing lawsuit

08/03/2017

6. Is the case still pending?

☒ Yes

☐ No

If no, give the approximate date of disposition.

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

☐ Yes

☒ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: June 26, 2018

Signature of Plaintiff

Printed Name of Plaintiff

Prison Identification #

Prison Address

Justin Randolph Mitchell
Justin Randolph Mitchell
0784177
633 Old Landfill Road
TAYLORSVILLE N.C. 28681
City State Zip Code

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address